IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6034 of 2004

Sambhaji S. Moruskar & anr. .. Petitioners

versus

The Administrative Officer, Nashik
Municipal Corpn. School Board,
Nashik and others .. Respondents

...

Mr.R.M. Haridas i/b P.N. Joshi for the petitioners.
Mr.Prashant Patil i/b Mr.R.V. More for the respondent no.1.
Mr.A.H. Palekar, AGP for respondent no.2
Mr.L.D. Vakil i/b M/s.Ram & Co. for the respondent nos.3 and 4.

CORAM : D.G. KARNIK, J

DATED : 16th February 2006.

P.C.:

1. Heard.

2. This Writ Petition is filed for quashing and setting aside the proceedings initiated by respondent nos.3 and 4 with the State Government for deciding the question of disqualification of the petitioners under the Bombay Primary Education Act 1947 (for short "the Act") to be the members of the board. It is contended that State Government has no jurisdiction to decide the said representation and therefore, the question of the jurisdiction should to be tried as the preliminary issue.

3. Section 6A of the Act empowers the State Government to decide whether a member who was elected, appointed or nominated as a member of the Board was disqualified. I am therefore prima facie not satisfied that the State Government has no power to decide the question of disqualification. In any event, the State Government cannot be compelled to decide the issue about jurisdiction as a preliminary issue. While

deciding the question of disqualification, the State Government would ofcourse, be required to decide an issue about its power if such an issue is raised at the hearing. With this clarification, Writ Petition is rejected.

4. Needless to say that all observations made above are only preliminary and would not bind the State Government for taking any decision about its jurisdiction in a lawful manner. If the final decision of the State Government is adverse to the petitioner, it shall not be implemented for a period of two weeks.

D.G. KARNIK, J